UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF: THE FRONTIER FERTILIZER SUPERFUND SITE TARGET CORPORATION Respondent PURSUANT TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT 42 U.S.C. §§ 9604, 9606, 9607, 9622	)	ADMINISTRATIVE AGREEMENT AND ORDER ON CONSENT FOR CERTAIN REMEDIAL ACTIVITIES U.S. EPA Region 9 CERCLA Docket No. 2008-01

I. INTRODUCTION

1. This Agreement and Order on Consent for Certain Remedial Activities by Bona Fide Prospective Purchaser ("Agreement") is voluntarily entered into by and between the United States on behalf of the Environmental Protection Agency ("EPA") and Target Corporation ("Purchaser")(collectively, the "Parties") under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601, *et seq.* Under this Agreement, Purchaser agrees to perform certain activities relating to the relocation and abandonment of groundwater wells on the property consisting of approximately 19 acres adjacent to Second Street near the intersection with Faraday Avenue in the City of Davis, California (the "Property"). The Property is located in very close proximity to the contamination necessary for implementation of the response action at the Frontier Fertilizer Superfund Site (the "Site"), CERCLIS ID No.CAD071530380.

II. JURISDICTION AND GENERAL PROVISIONS

2. This Agreement is issued pursuant to the authority vested in the President of the United States by Sections 104, 106, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606, 9607 and 9622, and delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the undersigned Regional official, and the authority of the Attorney General to compromise and settle claims of the United States.

3. The Parties agree that the United States District Court for the Eastern District of California will have jurisdiction pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any enforcement action brought with respect to this Agreement.

4. EPA has notified the State of California (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

5. For the purpose of this Agreement only, and for no other purposes, the Purchaser represents that it is a bona fide prospective purchaser ("BFPP") as defined by Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that it has and will continue to comply with Section 101(40) during its ownership of the Property, and thus qualifies for the protection from liability under CERCLA as set forth in Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Property. Purchaser in no way admits, nor shall be deemed to have admitted, any responsibility or liability for Existing Contamination under CERCLA (including, but not limited to, that Purchaser constitutes a responsible party under Section 107(a)(1) through (4)), or any other federal, state or local law. In entering into this Agreement, Purchaser in no way admits, nor shall it be deemed to have admitted, the existence or propriety of a windfall lien on the Property within the meaning of Section 107 (r) of CERCLA. Purchaser understands that EPA believes, based upon the detection of carbon tetrachloride in a groundwater well located near the southwestern boundary of the Property (well X-10B), that the edge of the contaminant plume from the Site may have migrated beneath a small portion of the Property. In view, however, of the complex nature and significant extent of the Work to be performed in connection with the remedial activities at the Site, and the risk of claims under CERCLA being asserted against Purchaser notwithstanding Section 107(r)(1) as a consequence of Purchaser's activities at the Property pursuant to this Agreement, one of the purposes of this Agreement is to resolve, subject to the reservations and limitations contained in Section XIX (Reservations of Rights by United States), any potential liability of Purchaser under CERCLA for the Existing Contamination as defined by Paragraph 10(g) below.

6. The resolution of this potential liability, in exchange for Purchaser's performance of the Work and reimbursement of certain response costs is in the public interest.

7. EPA and Purchaser recognize that this Agreement has been negotiated in good faith. Purchaser agrees to comply with and be bound by the terms of this Agreement and further agrees that it will not contest the basis or validity of this Agreement or its terms.

III. PARTIES BOUND

8. This Agreement applies to and is binding upon EPA and upon Purchaser and its successors and assigns. Any change in ownership or corporate status of Purchaser including, but not limited to, any transfer of assets or real or personal property shall not alter Purchaser's responsibilities under this Agreement.

9. Purchaser shall ensure that its contractors, subcontractors, and representatives comply with this Agreement, and, where appropriate, receive a copy of this Agreement. Purchaser shall be responsible for any noncompliance with this Agreement.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

    a. "Agreement" shall mean this Administrative Agreement and Order on Consent for certain Remedial Activities by Bona Fide Prospective Purchaser and all appendices attached hereto (listed in Section XXV). In the event of conflict between this Agreement and any appendix, this Agreement shall control.

    b. "BFPP" shall mean a bona fide prospective purchaser as described in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

    c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*

    d. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

e. "Effective Date" shall be the effective date of this Agreement as provided in Section XXVII.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

g. "Existing Contamination" shall mean:

i. any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the Effective Date;

ii. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and

iii. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the Effective Date.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

j. "On-site"shall mean the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.

k. "Oversight Costs" shall mean all direct and indirect costs incurred by EPA or the United States in monitoring and supervising Purchaser's performance of the Work to determine whether such performance is consistent with the requirements of this Agreement, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Agreement, as well as costs incurred in overseeing implementation of the Work.

l. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

m. "Parties" shall mean EPA and Purchaser.

n. "Property" shall mean the property consisting of approximately 19.06 acres adjacent to Second Street near the intersection with Faraday Avenue in the City of Davis, California identified as Yolo County Assessor Parcel Numbers 071-411-01, 071-411-02, 071-412-01, 071-421-01, 071-421-02, 071-421-003, 071-422-01, 071-422-02, and 071-422-03 as shown in Appendix 1 of this Agreement.

o. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

p. "Purchaser" shall mean Target Corporation.

q. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

r. "RPM" shall mean EPA's Remedial Project Manager.

s. "Site" shall mean the Frontier Fertilizer Superfund Site located at 4303 and 4309 Second Street and surrounding areas in Davis, California encompassing approximately 18 acres, and depicted generally on the map attached as **Appendix 1** The Site shall also include all areas of the Property to which hazardous substances and/or pollutants or contaminants have come to be located.

t. "SOW" shall mean the statement of work for the relocation and/or abandonment of groundwater wells on the Property as set forth in **Appendix 2** to this Agreement and any modifications made in accordance with this Agreement.

u. "Supervising Contractor" shall mean the principal contractor retained by Purchaser to supervise and direct the implementation of the Work agreed to in this Agreement and to sign and approve the Final Report submitted concerning such Work.

v. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities

w. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and (4) any "hazardous waste" under California Health and Safety.Code section 25117, or "hazardous substance" under California Health and Safety Code section 25316.

x. "Work" shall mean all groundwater well relocation and/or abandonment activities at the Property as described in the SOW that the Purchaser is required to perform under this Agreement.

V. FINDINGS OF FACT

11.

a. The Frontier Fertilizer Superfund Site was placed on the Superfund National Priorities List in 1994.

b. EPA issued a Record of Decision selecting a final remedy for the Site on September 28, 2006.

c. EPA is presently conducting environmental remediation activities at the Site, including the operation and maintenance of a groundwater monitoring, extraction and treatment system.

d. Groundwater in the three shallowest aquifers underlying the Site contains ethylene dibromide (EDB), 1,2-dichloropropane (DCP), 1,2-dibromo-3-chloropropane (DBCP), and/or carbon tetrachloride. Nitrate has also been detected in groundwater above drinking water standards.

e. The Property is located in close proximity to the Site and is necessary for implementation of the response action at the Site because the Property contains six monitoring wells (in two separate three-well clusters), two piezometer wells, and one groundwater extraction well, all constituting part of the groundwater monitoring, extraction and treatment system used for remedial action at the Site.

f. Based upon information reviewed by EPA, neither the Property, nor any operations conducted thereon, contributed to the Existing Contamination at the Site. Any Existing Contamination at or underlying the Property likely originated from the Site.

g. Hazardous substances have not been detected above levels of concern in the groundwater sampled from any of the groundwater wells located on the Property. However, carbon tetrachloride has been detected in a groundwater extraction well located near the southwestern border of the Property.

h. Purchaser plans to develop the Property for commercial retail uses. Purchaser's development plans may require the relocation and/or abandonment of some or all of the existing groundwater wells on the Property.

VI. DETERMINATIONS

12. Based on the Findings of Fact set forth above, and the Administrative Record supporting the remedial actions provided by this Agreement, EPA has determined that:

a. The Frontier Fertilizer Superfund Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, include "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Purchaser is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The conditions described in Paragraph 11 of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

e. The Work on the Property is part of the remedial action at the Site and is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VII. AGREEMENT

13. In consideration of and in exchange for the United States' Covenant Not to Sue in Section XVIII and the Release and Waiver of Lien in Section XXII, Purchaser agrees to comply with all provisions of this Agreement, including, but not limited to, all attachments to this Agreement and all documents incorporated by reference into this Agreement.

VIII. WORK TO BE PERFORMED

14. a. Purchaser shall perform, at a minimum, all actions necessary to implement the SOW. The actions to be implemented generally include, but are not limited to, the following: to the extent required by development plans at the Property, the removal, replacement, abandonment and/or modification of existing groundwater wells located on the Property and used in connection with the Site groundwater extraction and treatment system. Purchaser shall not, however, be responsible for the operation and maintenance of replaced or modified groundwater wells or any portion of the environmental remediation and monitoring system (including, but not limited to, the groundwater extraction and treatment system for the Site), except for equipment brought to the Property by Purchaser for the purpose of implementing

the Work. Purchaser is not, and shall not be deemed to be, the owner of the replaced or modified groundwater wells on the Property.

b. Purchaser shall perform all actions required by this Agreement in accordance with all applicable local, state, and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all On-site and on Property actions required pursuant to this Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws.

15. Work Plan and Implementation.

a. Within 20 days after the Effective Date, Purchaser shall submit to EPA for approval a draft Work Plan for performing the remedial activities generally described in Paragraph 14 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Agreement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Purchaser shall submit a revised draft Work Plan within 30 days of receipt of EPA's notification of the required revisions. Purchaser shall implement the Work Plan as approved or modified in writing by EPA in accordance with the schedule approved by EPA. Once approved, approved with modifications, or modified by EPA, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Agreement.

c. Purchaser shall not commence any Work except in conformance with the terms of this Agreement. Purchaser shall not commence implementation of the Work Plan developed hereunder until Purchaser receives written EPA approval or modification pursuant to Paragraph15(b).

16. Health and Safety Plan. Within 20 days after the Effective Date, Purchaser shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Property work under this Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Purchaser shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the remedial action.

17. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Purchaser shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Purchaser shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Purchaser shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans" (QA/R-2) (EPA/240/B-01/002, March 2001), or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Purchaser shall have a laboratory that meets the requirements of Paragraph 17.a above analyze samples submitted by EPA for QA monitoring. Purchaser shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Purchaser shall allow EPA or its authorized representatives to take split and/or duplicate samples. Purchaser shall notify EPA not less than 20 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Purchaser to take split or duplicate samples of any samples it takes as part of its oversight of Purchaser's implementation of the Work.

18. Reporting.

a. Purchaser shall submit a written progress report to EPA concerning actions undertaken pursuant to this Agreement every 30th day after the date of receipt of EPA's approval of the Work Plan until completion of the Work, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Purchaser shall submit 3 copies of all plans, reports or other submissions required by this Agreement, the SOW or any approved work plan to EPA and one copy to DTSC. Upon

request by EPA, Purchaser shall submit such documents in electronic form to be specified by EPA.

19. Final Report. Within 60 days after completion of all Work required by this Agreement, Purchaser shall submit for EPA review and approval in accordance with Section XXVI (Notice of Completion) a final report summarizing the actions taken to comply with this Agreement. The final report shall include a statement of actual costs incurred in complying with the Agreement, a listing of quantities and types of materials removed off-site or handled on-Property, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the Work (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by the Supervising Contractor who supervised or directed the preparation of said report:

> "Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

20. Off-Site Shipments.

a. Purchaser shall, prior to any off-site shipment of Waste Material from the Property to an out-of-State waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the RPM. However, this notification requirement shall not apply to any shipments when the total volume of all such shipments will not exceed 10 cubic yards.

1. Purchaser shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material, and 4) the method of transportation. Purchaser shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

2. The identity of the receiving facility and state will be determined by Purchaser following the award of the contract for the Work. Purchaser shall provide the information required above as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Property to an off-site location, Purchaser shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Purchaser shall only send hazardous substances, pollutants, or contaminants from the Property to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. AUTHORITY OF THE REMEDIAL PROJECT MANAGER

21. The RPM shall be responsible for overseeing Purchaser's implementation of this Agreement. The RPM shall have the authority vested in an RPM by the NCP, including the authority to halt, conduct, or direct any Work required by this Agreement, or to direct any other action undertaken at the Property. Absence of the RPM from the Property shall not be cause for stoppage of work unless specifically directed by the RPM.

X. PAYMENT OF OVERSIGHT COSTS

22. Payment of Oversight Costs Upon Receipt of Periodic Bills.

a. Purchaser shall pay EPA all Oversight Costs not inconsistent with the NCP. On a periodic basis, EPA will send Purchaser a bill requiring payment that includes a standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Purchaser shall make all payments required by this Paragraph by certified or cashier's check or wire transfer and made payable to "EPA Hazardous Substance Superfund," referencing the name and address of Purchaser, the Site name, EPA Region and Site/Spill ID Number: 094R, and the EPA docket number for this action. If payment is made by check, the check should be sent to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

If the payment is made by wire transfer it should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency "

If payment is made by overnight mail it should be sent to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson, (314) 418-4087

b. In the event that a payment for Oversight Costs is not made within 30 days of Purchaser's receipt of a bill, Purchaser shall pay Interest on the unpaid balance. Interest shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment.

c. The total amount to be paid by Purchaser pursuant to Paragraph 22 shall be deposited by EPA in the Frontier Fertilizer Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to finance response costs at the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

23. At the time of each payment, Purchaser shall send notice that such payment has been made to the RPM and the Regional Financial Management Officer in accordance with Section XXX (Notices and Submissions).

24. Pursuant to Section XIII (Dispute Resolution), Purchaser may dispute all or part of a bill for Oversight Costs if Purchaser determines that EPA has made a mathematical error or included a cost item that is outside the definition of Oversight Costs, or if Purchaser believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Purchaser shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 22 on or

before the due date. Within the same time period, Purchaser shall pay the full amount of the contested costs into an interest-bearing escrow account. Purchaser shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 23. Purchaser shall ensure that the prevailing party in the dispute receives the amount upon which it prevailed from the escrow funds plus any interest accrued within 20 calendar days after the dispute is resolved.

XI. ACCESS/NOTICE TO SUCCESSORS/INSTITUTIONAL CONTROLS

25. Purchaser agrees to provide EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property owned or controlled by Purchaser to which access is required for the implementation of response actions at the Site. EPA agrees to provide reasonable notice to Purchaser of the timing of response actions to be undertaken at the Property and other areas owned or controlled by Purchaser. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and other authorities.

26. Purchaser shall submit to EPA for review and approval a Land Use Covenant to be filed with the Recorder's Office of the County where the Property is located, which shall provide notice to all successors-in-title that the Property is adjacent to the Site, that EPA issued a Record of Decision on September 28, 2006 providing for the performance of a remedial action at the Site and that part of that remedial action includes the installation, maintenance, sampling, monitoring and abandonment of certain groundwater wells located on the Property. Purchaser shall record the Covenant within 30 days of EPA's approval of the Covenant. Purchaser shall provide EPA with a certified copy of the recorded Covenant within 10 days of recording such notice.

27. Purchaser shall implement and comply with any land use restrictions and institutional controls on the Property in connection with the response action.

28. For so long as Purchaser is an owner or operator of the Property, Purchaser shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Purchaser shall require that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action, and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Property.

29. Upon sale or other conveyance of the Property or any part thereof, Purchaser shall require that each grantee, transferee or other holder of an interest in the Property or any part thereof shall

provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Purchaser shall require that each grantee, transferee or other holder of an interest in the Property or any part thereof shall implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Property.

30. Purchaser shall provide a copy of this Agreement to any current lessee, sublessee, and other party with rights to use the Property as of the Effective Date.

31. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including, but not limited to, the certification requirement in Section XVII of this Agreement in order for the Covenant Not to Sue in Section XVIII to be available to that party. The Covenant Not To Sue in Section XVIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA .

XII. RECORD RETENTION, DOCUMENTATION, AND AVAILABILITY OF INFORMATION

32. Purchaser shall preserve all documents and information relating to the Work, or relating to the hazardous substances, pollutants or contaminants found on or released from the Site and/or the Property, and shall submit them to EPA upon completion of the Work required by this Agreement, or earlier if requested by EPA.

33. Purchaser may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Agreement, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by Purchaser. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2 Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Purchaser.

XIII. DISPUTE RESOLUTION

34. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this

Agreement. EPA and Purchaser shall attempt to resolve any disagreements concerning this Agreement expeditiously and informally. If EPA contends that Purchaser is in violation of this Agreement, EPA shall notify Purchaser in writing, setting forth the basis for its position. Purchaser may dispute EPA's position pursuant to Paragraph 35.

35. If Purchaser disputes EPA's position with respect to Purchaser's compliance with this Agreement or objects to any EPA action taken pursuant to this Agreement, including billings for Oversight Costs, Purchaser shall notify EPA in writing of its position unless the dispute has been resolved informally. EPA may reply, in writing, to Purchaser's position within 20 days of receipt of Purchaser's notice. EPA and Purchaser shall have 30 days from EPA's receipt of Purchaser's written statement of position to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted orally but must be confirmed in writing.

36. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Branch Chief level or higher will review the dispute on the basis of the parties' written statements of position and issue a written decision on the dispute to Purchaser. EPA's decision shall be incorporated into and become an enforceable part of this Agreement. Purchaser's obligations under this Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Purchaser shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XIV. FORCE MAJEURE

37. Purchaser agrees to perform all requirements of this Agreement within the time limits established under this Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Purchaser, or of any entity controlled by Purchaser, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Agreement despite Purchaser's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

38. If any event occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by a *force majeure* event, Purchaser shall notify EPA orally within five (5) days of when Purchaser first knew that the event might cause a delay. Within ten (10) days thereafter, Purchaser shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken

or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Purchaser's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Purchaser, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Purchaser from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

39. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Purchaser in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Purchaser in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

40. If Purchaser elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), Purchaser shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Purchaser shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a *force majeure* event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Purchaser complied with the requirements of Paragraphs 36 and 37 above. If Purchaser carries this burden, the delay at issue shall be deemed not to be a violation by Purchaser of the affected obligation of this Agreement.

XV. STIPULATED PENALTIES

41. Purchaser shall be liable to EPA for stipulated penalties in the amounts set forth in Subparagraphs 41a and 41b for failure to comply with the requirements of this Agreement specified below, unless excused under Section XIV (*Force Majeure*). "Compliance" by Purchaser shall include completion of the activities under this Agreement or any work plan or other plan approved under this Agreement identified below in accordance with all applicable requirements of law, this Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Agreement and within the specified time schedules established by and approved under this Agreement.

a. Stipulated Penalty Amounts - Work.

1. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph (2):

Penalty Per Violation Per Day	Period of Noncompliance
$ 500	1st through 14th day
$ 1,500	15th through 30th day
$ 5,000	31st day and beyond

2. Compliance Milestones and Major Reports

i. Submission to EPA of a draft Field Sampling Plan.

ii. Submission to EPA of a Health and Safety Plan.

iii. Submission to EPA of a Quality Assurance Project Plan.

iv. Submission to EPA of a Phase I Field Work Summary Report and Workplan.

v. Submission to EPA of the draft Environmental Land Use Covenant.

vi. Recordation of the approved Land use Covenant at the local County Recorder's Office.

vii. Late payment of EPA oversight costs.

b. Stipulated Penalty Amounts - Other Reports and Activities. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents not listed in Subparagraph a. above, and any other violation of this Agreement:

Penalty Per Violation Per Day	Period of Noncompliance
$250	1st through 14th day
$500	15th through 30th day
$1,500	31st day and beyond

42. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 58 of Section XIX (Reservation of Rights by United States), Purchaser shall be liable for a stipulated penalty in the amount of $500,000.

43. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Purchaser of any deficiency; and 2) with respect to a decision by the EPA Management Official at the Branch Chief level or higher, under Paragraph 35 of Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

44. Following EPA's determination that Purchaser has failed to comply with a requirement of this Agreement, EPA may give Purchaser written notification of the failure and describe the noncompliance. EPA may send Purchaser a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Purchaser of a violation.

45. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Purchaser's receipt from EPA of a demand for payment of the penalties, unless Purchaser invokes the dispute resolution procedures under Section XIII (Dispute Resolution). All payments to EPA under this Section shall indicate that the payment is for stipulated penalties, and shall reference the name and address of Purchaser, the Site name, the EPA Region and Site/Spill ID Number: 094R, and the EPA Docket Number 2008-01. All payments shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," and shall be mailed to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 79.

46. The payment of penalties shall not alter in any way Purchaser's obligation to complete performance of the Work required under this Agreement.

47. Penalties shall continue to accrue during any dispute resolution period, except as provided in Paragraph 43 above, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

48. If Purchaser fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Purchaser shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 44. Nothing in this Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Purchaser's violation of this Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b); provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Agreement. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Agreement.

XVI. FINANCIAL RESPONSIBILITY

49. The Parties agree and acknowledge that, in the event Purchaser ceases implementation of or otherwise fails to complete the Work in accordance with this Agreement, Purchaser shall ensure that EPA is held harmless from, or reimbursed for, all costs required for completion of the Work. For these purposes, Purchaser shall establish and maintain Financial Responsibility for the benefit of EPA in the amount of $ 250,000 (hereinafter "Estimated Cost of the Work") in one or more of the following forms, each of which must be satisfactory in form and substance to EPA:

a. A surety bond unconditionally guaranteeing payment and/or performance of Work;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA;

c. A trust fund established for the benefit of EPA;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary;

e. A demonstration by Purchaser that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied;

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (I) a direct or indirect parent company of Purchaser, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Purchaser; provided, however, that any company providing such a

guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

50. Purchaser has selected, and EPA has approved, as an initial Financial Responsibility mechanism a demonstration of satisfaction of financial test criteria pursuant to Paragraph 49(e) with respect to Purchaser.

51. The commencement of any Work Takeover pursuant to Paragraph 58 of this Agreement (Work Takeover) shall trigger EPA's right to receive the benefit of any Financial Responsibility mechanism(s) provided pursuant to Paragraph 49(a), (b), (c), (d), or (f), and at such time EPA shall have immediate access to resources guaranteed under any such Financial Responsibility mechanism(s), whether in cash or in kind, as needed to complete the Work. In the event that the Financial Responsibility mechanism involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph (e), then, after the commencement by EPA of any Work Takeover pursuant to Paragraph 58 of this Agreement (Work Takeover), Purchaser shall immediately upon written demand from EPA deposit into an account specified by EPA a cash amount up to but not exceeding the Estimated Cost of the Work as of such date, as determined by EPA and notified to Purchaser.

52. If Purchaser desires to reduce the amount of any Financial Responsibility mechanism(s), change the form or terms of any Financial Responsibility mechanism(s), or release, cancel or discontinue any Financial Responsibility mechanism(s) because the Work has been fully and finally completed in accordance with this Agreement, Purchaser shall make this request to EPA in writing and EPA shall either approve or disapprove the request in writing.

XVII. CERTIFICATION

53. By entering into this agreement, Purchaser certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Purchaser and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Property and to its qualification for this Agreement. Purchaser also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Property or the Site. If the United States determines that information provided by Purchaser is not materially accurate and complete, the Agreement, within the sole discretion of EPA, shall be null and void and EPA reserves all rights it may have.

XVIII. COVENANT NOT TO SUE BY UNITED STATES

54. In consideration of the actions that will be performed and the payments that will be made by Purchaser under the terms of this Agreement, and except as otherwise specifically provided in this Agreement, the United States covenants not to sue or to take administrative action against Purchaser pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Purchaser of all obligations under this Agreement, including, but not limited to, payment of Oversight Costs pursuant to Section X. This covenant not to sue extends only to Purchaser and does not extend to any other person.

XIX. RESERVATION OF RIGHTS BY UNITED STATES

55. Except as specifically provided in this Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA or the United States from seeking legal or equitable relief to enforce the terms of this Agreement, and/or from taking other legal or equitable action as it deems appropriate and necessary.

56. The covenant not to sue set forth in Section XVIII above does not pertain to any matters other than those expressly identified therein. The United States reserves, and this Agreement is without prejudice to, all rights against Purchaser with respect to all other matters, including, but not limited to:

a. claims based on a failure by Purchaser to meet a requirement of this Agreement;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability for violations of federal, state, or local law or regulations during or after implementation of the Work other than as provided in the Workplan, the Work, or otherwise ordered by EPA;

e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Property or the Site after the Effective Date, not within the definition of Existing Contamination;

f. liability resulting from exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees; and

g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Site.

57. With respect to any claim or cause of action asserted by the United States, Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that Purchaser has complied with all of the requirements of 42 U.S.C. § 9601(40).

58. Work Takeover. In the event EPA determines that the Purchaser has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Prior to taking over the Work, EPA will issue written notice to Purchaser specifying the grounds upon which such notice was issued and providing Purchaser with 20 days within which to remedy the circumstances giving rise to EPA's issuance of the notice. Purchaser may invoke the procedures set forth in Section XIII (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any Financial Responsibility mechanism provided pursuant to Section XVI (Financial Responsibility) of this Agreement. Notwithstanding any other provision of this Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANT NOT TO SUE BY PURCHASER

59. Subject to the reservations in Paragraph 60, Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Existing Contamination, the Work, Oversight Costs, or this Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

60. The Purchaser reserves, and this Agreement is without prejudice to, Purchaser's claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Purchaser's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA

61. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXI. CONTRIBUTION

62. Nothing in this Agreement precludes the United States or Purchaser from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Agreement, including any claim Purchaser may have pursuant to Section 107(a)(4)(B). Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

63. In the event of a suit or claim for contribution brought against Purchaser, notwithstanding the provisions of Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination (including any claim based on the contention that Purchaser is not a BFPP, or has lost its status as a BFPP as a result of response actions taken in compliance with this Agreement or at the direction of the RPM), the Parties agree that this Agreement shall then constitute an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C.§ 9613(f)(2), and that Purchaser would be entitled, from the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination.

64. In the event Purchaser were found, in connection with any action or claim it may assert to

recover costs incurred or to be incurred with respect to Existing Contamination, not to be a BFPP, or to have lost its status as a BFPP as a result of response actions taken in compliance with this Agreement or at the direction of the RPM, the Parties agree that this Agreement shall then constitute an administrative settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Purchaser has resolved its liability for all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination.

65. Purchaser agrees that with respect to any suit or claim brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

66. Purchaser also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify the United States in writing within 10 days of service of the complaint on it.

XXII. RELEASE AND WAIVER OF LIEN(S)

67. Subject to the Reservation of Rights in Section XIX of this Agreement, upon satisfactory completion of the Work specified in Section VIII (Work to be Performed) and payment of Oversight Costs, EPA agrees to release and waive any lien it may have on the Property now and in the future under Section 107 (r) of CERCLA, 42 U.S.C.§ 9607(r), for costs incurred or to be incurred by EPA in responding to the release or threat of release of Existing Contamination. This release and waiver of lien is expressly limited to the Property and does not apply to the Site.

XXIII. INDEMNIFICATION

68. Purchaser shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out the Work, pursuant to this Agreement. In addition, Purchaser agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Purchaser, Purchaser's officers, directors, employees, agents, contractors, subcontractors and any persons acting on Purchaser's behalf or under Purchaser's control, in carrying out the Work or other activities pursuant to this Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Purchaser in carrying out activities pursuant to this Agreement. Neither Purchaser nor any such contractor shall be considered an agent of the United States.

69. The United States shall give Purchaser notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Purchaser prior to settling such claim.

70. Purchaser waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Purchaser shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. MODIFICATION

71. The RPM may make minor modifications to any plan or schedule or the SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any other requirements of this Agreement may be modified in writing by mutual agreement of the Parties.

72. If Purchaser seeks permission to deviate from any approved work plan or schedule or SOW, Purchaser's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Purchaser may not proceed with the requested deviation until receiving oral or written approval from the RPM.

73. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Purchaser shall relieve Purchaser of its obligation to obtain any formal approval required by this Agreement, or to comply with all requirements of this Agreement, unless it is formally modified.

XXV. APPENDICES

74. The following appendices are attached to and incorporated into this Agreement.

a. Appendix 1 shall mean the map of the Site and Property.

b. Appendix 2 shall mean the SOW.

XXVI. NOTICE OF COMPLETION

75. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Agreement, with the exception of any continuing obligations

required by this Agreement, including continued compliance with CERCLA Section 101(40) with respect to the Property in accordance with Paragraph 5 of this Agreement, record retention, access and compliance with institutional controls, EPA will provide written notice to Purchaser. If EPA determines that any such Work has not been completed in accordance with this Agreement, EPA will notify Purchaser, provide a list of the deficiencies, and require that Purchaser modify the Work Plan if appropriate in order to correct such deficiencies. Purchaser shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Purchaser to implement the approved modified Work Plan shall be a violation of this Agreement.

XXVII. EFFECTIVE DATE

76. The Effective Date of this Agreement shall be the date upon which EPA issues written notice to Purchaser that EPA has fully executed the Agreement after review of and response to any public comments received.

XXVIII. DISCLAIMER

77. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XXIX. PAYMENT OF COSTS

78. If Purchaser fails to comply with the terms of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XXX. NOTICES AND SUBMISSIONS

79. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Agreement, shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Submissions to **Purchaser** shall be addressed to:

David Lima
Senior Counsel
Target Corporation
1000 Nicollet Mall

TPS-3155
Minneapolis, MN 55403

With copies to:

Kenneth A. Ehrlich, Esq.
Jeffer, Mangels, Butler & Marmaro
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067

Submissions to **EPA** shall be addressed to:

Bonnie Arthur
EPA Remedial Project Manager
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA. 94105

David Wood
Superfund Accounting (PMD)
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA. 94105

Submissions to the **California Department of Toxic Substances Control** shall be addressed to:

Steve Ross
Cal EPA, DTSC
Northern California Cleanup Operations Branch
8800 Cal Center Drive
Sacramento, California 95826-3200

XXXI. PUBLIC COMMENT

80. This Agreement shall be subject to a 30 day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

The undersigned representative of Purchaser certifies that it is fully authorized to enter into the terms and conditions of this Agreement and to bind the party it represents to this document.

IT IS SO AGREED:

TARGET CORPORATION

BY:

12/13/07
Date

Scott Nelson
Sr. Vice President
Target Corporation

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: 1/14/08

Michael Montgomery, Chief — Date
Federal Facilities and Site Cleanup Branch
United States Environmental Protection Agency
Region 9
75 Hawthorne Street
Sa n Francisco, CA 94105

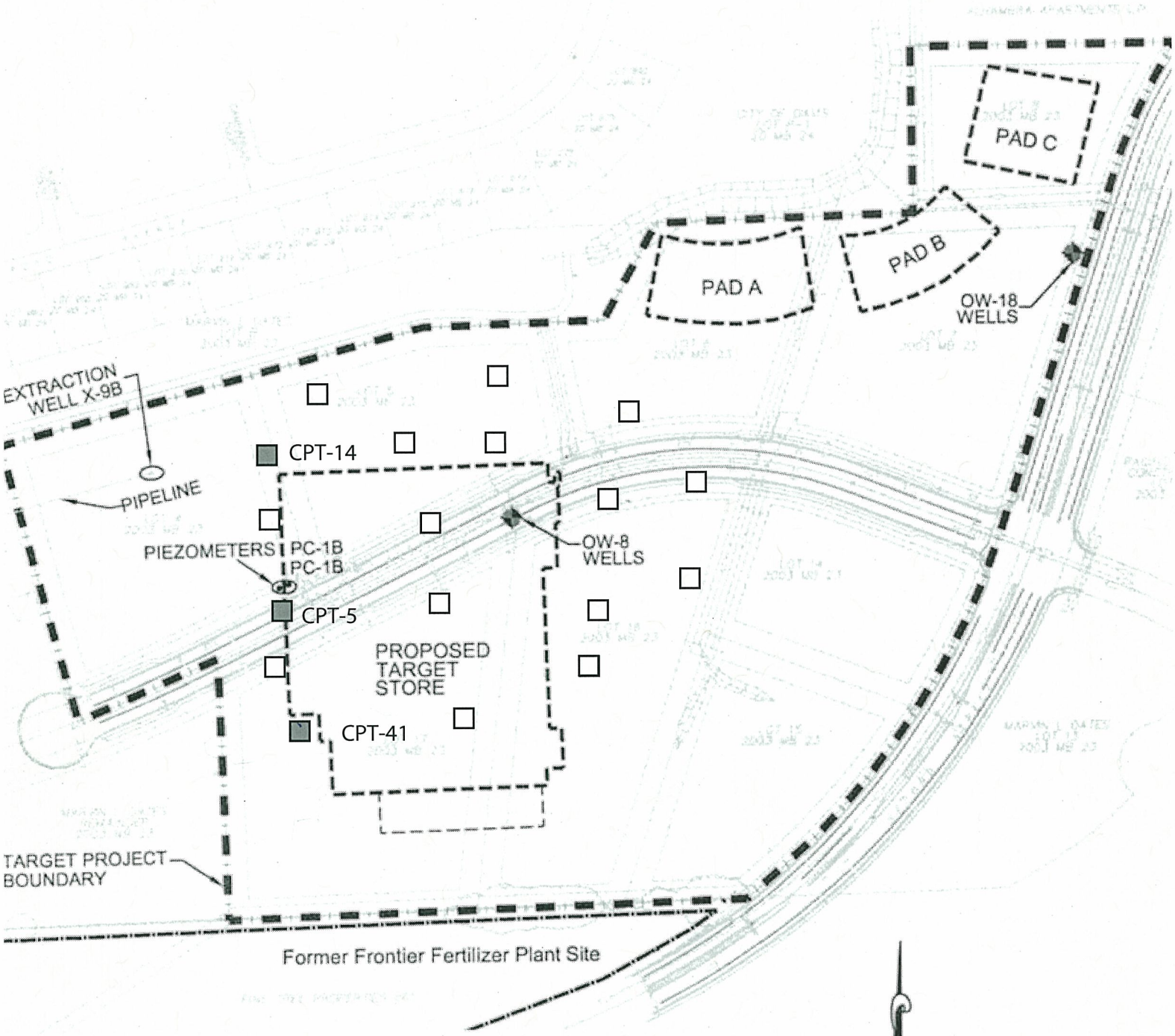
IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY: 8 Feb 2008

Ronald J. Tenpas
Assistant Attorney General — Date
Environment and Natural Resources Division
U.S. Department of Justice
Washington D.C. 20530

APPENDIX 1



Previous CPT locations, repeat sampling locations recommended for this scope of work.

Proposed sampling locations

LEGEND

- Property Boundary
- Outline Of Planned Structures
- Former Frontier Fertilizer Plant Site
- OW-08 WELLS

200 0 100 200 400

APPROXIMATE SCALE: 1 inch = 200 ft.

KLEINFELDER

GENERAL SITE PLAN & PROPOSED STRUCTURES
PROPOSED TARGET STORE
RETAIL DEVELOPMENT

PLATE 2

APPENDIX 2

Scope of Work (SOW) for Well Installation Activities associated with the Davis Target Development on the Eastern Side of the Frontier Fertilizer Superfund Site

1. INTRODUCTION

This Statement of Work (SOW) describes investigations and other activities that require modification of existing Frontier Fertilizer Superfund Site (Site) groundwater remediation infrastructure to accommodate development. This SOW provides a plan to modify existing cleanup infrastructure and select acceptable alternative wells to replace wells proposed for abandonment as part of the Target development. The wells located in the proposed development area are part of an extraction and monitoring network critical to site cleanup. Over 90 monitoring wells have been installed between 1987 and 2003 to monitor the contaminant plumes associated with the Frontier Fertilizer Superfund Site. Wells in the proposed development area are used to monitor the eastern boundary of the pesticide and carbon tetrachloride plumes to evaluate the cleanup effectiveness.

Ready access to monitoring wells must be maintained in order to facilitate maintenance and weekly monitoring. EPA requires access to these wells at a minimum of every three months to collect water samples. Wells and utilities are currently not constructed to accommodate surface loads related to vehicle or equipment traffic, therefore, must be protected from such traffic. Surface grades adjacent to wells shall drain water away from well heads to prevent water intrusion into the well heads. Wells heads and/or well seals shall not be removed except when necessary for work on the wells. No matter shall be allowed to enter wells during work, unless it is approved as required for well abandonment. During all work and land use activities, wells shall be continuously protected from intrusion of any matter, for example water, animals, and construction debris.

The work performed pursuant to this Agreement shall be under the direction and supervision of a qualified project coordinator, with expertise in hazardous substance site cleanup. Target shall submit: a) the name and address of the project coordinator; and b) upon EPA and DTSC's request, the resume of the coordinator in order to demonstrate expertise in hazardous substance site cleanup. Target shall promptly notify EPA and DTSC of any change in the Project Coordinator. All engineering and geological work shall be conducted in conformance with applicable state law, including but not limited to, Business and Professions Code Sections 6735 and 7835.

2. WORK TO BE PERFORMED

An assessment shall be conducted to determine measures necessary to protect wells from detrimental impact, that is reducing their effectiveness and accessibility, during construction and subsequent land use activities. This work could involve installing barricades around the potentially impacted wells so that they can be easily seen and avoided by construction crews. If it is determined that the detrimental impact to wells can not be avoided, they shall be modified or be properly abandoned following completion and acceptance of appropriate replacement wells.

2.1 As a first phase to facilitate selection of alternate wells, one time groundwater level measurement, sampling, and lithologic delineation, (such as Cone Penetration Testing or equivalent process) shall be used to identify vadose zone and aquifer hydrogeologic characteristics and the presence or absence of chemicals of concern (COC). Site chemicals of concern (COCs) have been identified as 1,2-Dibromo-3-chloropropane (DBCP), 1,2-Dibromoethane (EDB), 1,2-Dichloropropane (DCP), Carbon Tetrachloride (CC4) and 1,2,3-Trichloropropane (TCP). Samples shall be collected to delineate presence of COCs both vertically and horizontally to a depth of 100 feet below ground surface (bgs) to characterize potential for exposure to COCs during construction, subsequent land use, and via groundwater migration. Please see attached map for suggested 1st phase sampling locations. Target shall consult with EPA, DTSC and EPA's contractor, CH2MHill, during characterization activities to validate characterization activities.

2.2 A soil gas assessment shall be conducted with a minimum of three one-time sampling locations adjacent to the western wall of the proposed building footprint to ensure that indoor air risks from volatile COCs are not present. This work shall involve the collection of soil gas samples from depths of approximately five and 15 to 20 feet below ground surface and tested for volatile COCs with sufficiently low detection limits to assess the potential for indoor air risks. If soils have insufficient air permeability then soil samples shall be collected in accordance with EPA Method 5035 (encore sampling devices) and tested for volatile COCs. Soil samples shall be collected from one-time sample locations located a few feet away from where soil gas sampling was attempted.

Soil gas samples should be collected in accordance with the following procedure:

- Seal the surface around the boring annulus with bentonite to prevent ambient air intrusion.
- Conduct leak tests using tracer gas to evaluate ambient air intrusion (ex. isopropanol in shaving cream)
- Conduct tests to determine the optimal purge volume for sampling.
- Purge and sample at low flow rates (less than 200 milliliters per minute).
- Collect samples in Summa™ canisters (USEPA TO-15 Method).
- Avoid soil gas sample collection following significant rainfall events.

Please refer to Guidance For The Evaluation And Mitigation Of Subsurface Vapor Intrusion To Indoor Air - Interim Final: http://www.dtsc.ca.gov/loader.cfm?url=/commonspot/security/getfile.cfm&pageid=11492 and in accordance with the DTSC soil gas advisory: http://www.dtsc.ca.gov/LawsRegsPolicies/Policies/SiteCleanup/upload/SMBR_ADV_activesoilgasinvst.pdf .

2.3 Groundwater level maps shall be constructed and reviewed to locate appropriate alternate well locations. Maps should be based on hydrogeologic characterization results as well as water level measurements from existing wells. Water level measurements of these wells enable EPA to determine groundwater cleanup effectiveness.

2.4 Prior to the start of fieldwork, a work and deliverable schedule, Field Sampling Plan (FSP), and Quality Assurance Project Plan (QAPP) shall be submitted to EPA and DTSC for review and approval. These plans shall discuss the one-time groundwater sampling locations (Phase 1), rationale for selecting locations for replacement wells and schedule. Please see attached map that depicts a minimum number of Phase 1 sampling locations. EPA and DTSC will require 30 days for review of the FSP and QAPP. The FSP and QAPP shall include proposed well and utility protective measures, groundwater chemical and hydrogeologic characterization methods, new well instillation methods (well installation procedures and materials) to be utilized for installing replacement wells, and procedures for well and possible boring abandonment. EPA's contractor will collect the monitoring well samples and provide a split (or duplicate) sample to Target's contractor for analysis.

2.5 Upon completion of Phase 1 fieldwork, a report shall be submitted to DTSC and EPA summarizing data and proposed locations for replacement wells. The report shall be approved prior to initiating any construction work.

2.6 New wells shall be in place and demonstrated to provide at least equivalent data prior to the abandonment of existing wells. At a minimum, two rounds of groundwater quality data and three months of elevation data after well development occurs, shall be collected to evaluate the effectiveness of the new wells. EPA and DTSC must evaluate data concurrently between existing and new wells to determine data equivalency. Additional wells may be needed if initial wells are determined inadequate; that is they do not provide equivalent or better volumes of groundwater or data.

2.7 All fieldwork schedules shall be submitted to EPA and DTSC a minimum of two weeks in advance to allow for field oversight scheduling.

2.8 Access to existing and replacement wells shall be maintained for EPA and DTSC to collect samples and/or perform maintenance.

2.9 After construction of the new wells, lithologic and well construction logs shall be submitted to DTSC and EPA.

2.10 Consistent with the March 20, 1992 Stipulated Agreement by Mace Ranch Park Development and the State of California for property within 2000 feet of Frontier Fertilizer, prepare and submit as-built drawings showing placement of any fill material, excavation of existing soil, and grading.

2.11 As defined in the Covenant Mace Ranch Park Development, recorded on March 26, 1992 at the Yolo County Recorder, the restrictions on residential, municipal and agricultural ground water well construction that run with the land apply.